

BOARD OF APPEALS CASE NO. 5065

*

BEFORE THE

APPLICANTS: Lawrence & Judith Schiavi

*

ZONING HEARING EXAMINER

**REQUEST: Variance to permit 5 lots on
panhandles; 1841 Glenville Road, Havre de Grace**

*

OF HARFORD COUNTY

*

Hearing Advertised

*

Aegis: 7/21/00 & 7/26/00

HEARING DATE: August 23, 2000

Record: 7/21/00 & 7/28/00

*

* * * * *

ZONING HEARING EXAMINER'S DECISION

The Applicants, Lawrence and Judith Schiavi are seeking a variance to permit a fifth panhandle lot pursuant to Section 267-22G(4) and 267-22G(4)(b). In the alternative, the Applicant seeks an interpretation that no variance is required because 2 separate lots are involved.

The subject property is located on the east side of Glenville Road, south of Harmony Church Road and is more particularly identified on Tax Map 36, Grid 2B, Parcel 120. The parcel consists of 29.47 acres, more or less, is zoned AG/Agricultural, and is located entirely within the Second Election District

Mr. Gerald Wolf appeared and qualified as an expert in landscape design, survey and architecture as well as site plan development. Mr. Wolf described the property and stated that there were two lots at this location, one described as the lands of William Mitchell and the other, the lands of Harvey Mitchell. There are existing panhandles on one lot already and proposed is additional panhandle lots on the second property. Access would be provided by Glenville Road and a common driveway. The witness explained that use of the existing driveway avoids the necessity of crossing 2 existing streams and a wetland area which could be disturbed to avoid the creation of panhandles. However, by reconfiguring to panhandles lots, such disturbance of sensitive areas is avoided.

Case No. 5065 – Lawrence & Judith Schiavi

Mr. Wolf concluded that the existence of wetland area and streams on the property made this property topographically unique and that these sensitive features placed constraints on lot configuration that could be easily mitigated by creation of these panhandles. Practical difficulty would result if this variance were not granted in that two streams and a wetland would necessarily be disturbed and improvements to Glenville Road would cost \$150,000 or more. The property has three development rights and perc tests have indicated excellent results. The witness did not think using the existing driveway would in any way materially impact adjoining property owners.

Mrs. Judith Schiavi appeared and testified that she is the contract purchaser of Lot #3 on the William Mitchell property. She presently lives on a lot located on the lands of Harvey Mitchell. There are several other family members living on lots created on these lands. She intends to hold the lot and give it to her daughter someday. The witness believed the driveway was adequate and she has no desire or need to build a private road. Mrs. Schiavi did not feel as though the grant of this variance would adversely impact any of her neighbors and reiterated the testimony of Mr. Wolf in that unique topographical features of this lot create this need for variance.

The Department of Planning and Zoning (Department) was represented by Mr. Anthony McClune. Mr. McClune stated that the Department supported the Applicant's request and agreed that this property is uniquely configured and contains sensitive environmental features. The Department feels that the creation of panhandles acts to mitigate the disturbance to these sensitive features and would in no way adversely impact any other properties. Both of these lots were created as part of a subdivision and, at one time, there were plats on file that showed six lots. The current plan is to create five lots.

There were no persons who appeared to offer testimony in opposition to the request. However, Mr. Jerry Davis and Ms. Dorsey Crocker expressed some concerns regarding perc tests, and use of the private drive. It was pointed out by the Hearing Examiner that any rights for common use of the driveway were not an issue in this matter and would be controlled by legal documents that could include deeds and easements as well as common driveway agreements.

Case No. 5065 – Lawrence & Judith Schiavi

CONCLUSION:

Section 267-22(G) and 267-22(G)(4) provide:

Panhandle-lot requirements. Panhandle lots shall be permitted for agricultural and residential uses, to achieve better use of irregularly shaped parcels, to avoid development in areas with environmentally sensitive features or to minimize access to collector or arterial roads, subject to the following requirements:

- (1) Except in Agricultural and Rural Residential Districts, with regard to any parcel, as it existed on September 1, 1982, not more than one (1) lot or five percent (5%) of the lots intended for detached dwellings, whichever is greater, and not more than ten percent (10%) of the lots intended for attached dwellings may be panhandle lots.**
- (2) Panhandles shall be a maximum of seven hundred (700) feet in length. The Zoning Administrator may grant a waiver of the maximum length where the topography, natural features or geometry of the parcel make a longer panhandle necessary.**
- (3) A common drive shall be constructed to serve any group of two (2) or more panhandle lots. Driveways for all panhandle lots shall access from the common drive.**
- (4) Groups not exceeding four (4) lots may have two (2) lots on panhandles in accordance with the following criteria. Panhandle lots and subdivisions shall have, as a minimum, the following width:**
 - (a) Single panhandles: twenty-five (25) feet.**
 - (b) Double panhandles: twelve and one-half (12½) feet each, for a total of twenty-five (25) feet.**

The Harford County Code, pursuant to Section 267-11, provides:

"Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.**
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest."**

Case No. 5065 – Lawrence & Judith Schiavi

The Hearing Examiner agrees that the subject property is topographically unique. There are two streams bisecting the parcel and there are delineated wetland areas. In order to avoid the need for a panhandle configuration a road would need to be constructed which would impact both streams and the wetland area. Avoiding such disturbance is an important element of the panhandle design. There was no testimony that any adverse impacts would result from a grant of the variance nor was there any indication that the public health or safety would be adversely impacted. The Code provides for panhandle lots, thus, the purposes of the Zoning Ordinance are not impaired. Lastly, the Applicant's witness clearly stated the practical difficulty that would result if the variance were not granted.

The Applicant also sought an interpretation as to whether a variance was needed at all in this case because there were two lots involved. The Hearing Examiner has no need to render an alternative decision in that regard since the recommendation of the Hearing Examiner is for approval of the Applicant's request subject to the following conditions:

1. The Applicants submit a preliminary plan to the Department of Planning and Zoning.
2. The Applicant's submit a final plat to the Department of Planning and Zoning for approval and recordation in the Harford County Land Records.
3. A common drive shall be utilized by all five lots. A revised common drive agreement shall be submitted for review and recordation with the final plat and shall include any and all properties having access and use of the existing common driveway.

Date **SEPTEMBER 20, 2000**

William F. Casey
Zoning Hearing Examiner